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OFFICE OF PETITIONS

In re Application of :
Roberk Babiak :
Application No. 10/673,984 :
Filed: September 30, 2003 : ON PETITION
Attorney Docket No.: Semet-001 :

This is a decision on the petition under 37 CFR 1.137(a), filed June 6, 2005, to revive the above-identified application. The petition is properly treated as a petition under 37 CFR 1.181, to withdraw the holding of abandonment.

The petition is granted.

The above-identified application became abandoned for failure to timely reply to the Notice of Non-Compliant Amendment ("Notice"), mailed October 8, 2004. The Notice set a one (1) month period for reply, and extensions of time were available under 37 CFR 1.136(a). No reply having been received, the above-identified application became abandoned November 9, 2004. A Notice of Abandonment was mailed on May 5, 2005.

Applicant's Assertion

Applicant asserts that a reply to the Notice was timely filed on November 1, 2004. In support of this assertion, Applicant provides copies of the Response to Notice of Non-Compliant Amendment, which includes a Certificate of Mailing dated November 11, 2004.

Under 37 CFR 1.8

"[c]orrespondence required to be filed in the Patent and Trademark Office within a set period of time will be considered timely filed if the procedure described in this section is followed. The actual date of receipt will be used for all other purposes.

(1) Correspondence will be considered as being timely filed if:

(i) The correspondence is mailed or transmitted prior to the expiration of the set period of time by being:

(A) Addressed as set out in § 1.1(a) and deposited with the U.S. Postal Service with sufficient postage first class mail; or

(B) Transmitted by facsimile to the Patent and Trademark Office in accordance with § 1.6(d); and

(ii) The correspondence includes a certificate for each piece of correspondence stating the date of deposit or transmission. The person signing the certificate should have a reasonable basis to expect that the correspondence would be mailed or transmitted on or before the date indicated.

In view of the foregoing, the holding of abandonment is hereby withdrawn.

The Office also notes that applicant avers non-receipt of the Notice and of the subsequently mailed Notice of Abandonment, despite the filing of a Power of Attorney.

A review of the file reveals that Applicant filed a declaration/power of attorney on July 28, 2004. Office records further reveal that the inventor filed a declaration with the application on September 30, 2003. The declaration/power of attorney filed on July 28, 2004, is apparently intended as a power of attorney and correspondence address change, as opposed to a substitute declaration/power of attorney.

Applicant is advised that 37 CFR 1.4(c) provides that

[s]ince different matters may be considered by different branches or sections of the United States Patent and Trademark Office, each distinct subject, inquiry or order must be contained in a separate paper to avoid confusion and delay in answering papers dealing with different subjects.

The power of attorney and correspondence address change has been entered and made of record.

No petition fee has been charged and none is due. A refund of the petition fee has been credited to deposit account 50-1237.

The application file is being referred to Technology Center Art Unit 3763 for processing of the Response to Notice of Non-Compliant Amendment, filed November 11, 2004 (using the copy re-filed with the instant petition) in due course.

Telephone inquiries concerning this decision should be directed to the undersigned at 571-272-3232.



Derek L. Woods
Petitions Attorney
Office of Petitions